REMARKS

Claims 1, 7-14, 18, and 21 are now pending. Claim 7 and 18 have been amended to address the written description and indefiniteness rejections. Claim 19 has been canceled without prejudice or disclaimer.

The rejection of claims 7 and 8 under 35 U.S.C. § 112, first paragraph (written description) is traversed and reconsideration is respectfully requested. Claim 7 has been amended to delete the reference to transition phases, and claim 18 has been amended to delete the reference to FC43, PP11, and PP25. Thus, this rejection may be properly withdrawn.

Applicants traverse the rejection of claim 7 under 35 U.S.C. § 112, second paragraph. Claim 7 has been amended to delete the reference to "transition phase" and thus this rejection may be properly withdrawn.

Applicants traverse the rejection of claims 1, 7-8, 10-14, 18, and 21 under 35 U.S.C. § 102(e) as being anticipated by Richter (U.S. 6,274,614). At best, Richter discloses a genus of compositions, not the species as claimed. Specifically, Richter does not disclose or suggest the claimed invention with particularity as required by *Uniroyal, Inc. v. Rudkin-Wiley Corp.* 837 F.2d 1044, 5 U.S.P.Q.2d (BNA) 1434 (Fed. Cir. 1988) and *Interconnect Planning Corp v. Feil*, 774, F.2d 1132, 1143, 227 U.S.P.Q. (BNA) 543, 547-48 (Fed. Cir. 1985). Applicants respectfully submit that the selective combination of various disclosures within this reference to arrive at the claimed invention with no motivation to do so is improper. The Office must set forth a reason for the selective combination of the claimed composition other than relying on hindsight gleaned from the claimed invention itself. With regard to claim 7, Richter does not disclose with particularity a complex which is selected from a micelle, an emulsion, a gel, or a matrix when the block copolymer is in liquid form, which results in the solid composition as claimed. Further, although Richter discloses poloxamer surfactants, it does not disclose whether or not a composition having a poloxamer surfactant is in a liquid form or in a solid form. Thus, the reference has not disclosed the claimed invention with particularity and withdrawal of this rejection is requested.

Applicants traverse the rejections under 35 U.S.C. § 103(a) of a) claims 1, 8, and 10 as being obvious over Rajagopalan (WO 99/51284), b) claims 1 and 7-14 as obvious over Lyons (U.S. 5,616,342), and c) claims 18-19 as obvious over Lyons. The Office has stated that "Rajagopalan's formulation is not a solid." However, the claimed invention requires that the composition is a solid. Thus, a *prima facie* case of obviousness has not been established in accordance with MPEP § 2143. Although a *prima facie* case was not established, the Office improperly requires that applicants demonstrate that the solid form provides "unusual results." However, applicants may rebut a case of *prima facie* obviousness with a demonstration of unexpected results, but in this case, a *prima facie* case of obviousness has not been made with respect to Rajagopalan.

Similarly, with respect to Lyons, the Office has not established *prima facie* obviousness because this reference does not disclose a solid as claimed. The Office rejects claims 1 and 7-14 because "[n]o unexpected result is presented for use of solid vs. emulsion formulations, both of which are used in photodynamic therapy." Again, the Office must first establish *prima facie* obviousness before the burden shifts to applicants to provide evidence of unexpected results.

Similarly, with respect to claims 18 and 19, the Office has not established all of the claim elements. Moreover, claims 18 and 19 define a particular species which is not disclosed in Lyons. Thus, withdrawal of these rejections is respectfully requested.

If the Examiner is not convinced that the present claims are in condition for allowance, applicants respectfully request an interview with the Examiner and the Examiner's supervisor.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 273012011601. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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